

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13494, of Anacostia Economic Development Corp., pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Sub-section 3102.3) to use the subject premises as a dental office in an R-2 District at the premises 3601 Martin Luther King Avenue, S.E., (Square 6070, Lot 27).

HEARING DATES: June 10 and July 22, 1981
DECISION DATE: September 2, 1981

FINDINGS OF FACT:

1. The subject application was first scheduled for the public hearing of June 10, 1981. At that hearing it was discovered that notice of the public hearing was sent to ANC-8A rather than ANC-8D. The application was continued to the public hearing of July 22, 1981 and ANC-8D was given proper notice.

2. The subject site is located at the southwest corner of the intersection of Martin Luther King Avenue and Sterling Street and is known as premises 3601 Martin Luther King Avenue, S.E. It is in an R-2 District.

3. The site is rectangular in shape and topographically level. The site is approximately twenty-four feet wide and 132 feet in depth. The lot is developed with a two story frame, single family, detached dwelling and detached two car garage. The house is vacant and boarded. The garage has been damaged by fire. The yard is overgrown with weeds.

4. To the north of the subject site is Sterling Street, followed by single family detached dwellings, in the R-2 District. To the east is Martin Luther King Avenue followed by single family detached dwellings in the R-2 District. To the south adjacent to the site is a vacant lot followed by single family detached dwellings in the R-2 District and to the west is a public alley, followed by single family detached dwellings along Brothers Place in the R-2 District. The property is located in the Congress Heights neighborhood. Saint Elizabeth's Hospital is located several blocks north of the site.

5. The applicant dentist has entered a contract to purchase the subject property subject to the approval of the relief he now seeks from the BZA.

6. The applicant is requesting a use variance to use the subject premises as a dental office. The site is located in the R-2 District which allows a dental office only if the dentist resides on the premises and subject to certain other restrictions. A dental office without the residential restriction is first allowed in the SP-1 District as a special exception and in a C-1 District as a matter of right.

7. The applicant proposes to renovate the first floor of the premises for office use. There are proposed to be three dental chairs in the office, and a maximum of four employees including the applicant. The applicant presently is operating from a dental office located at 2041 Martin Luther King Avenue, S.E. in a C-2-A District in the Anacostia Professional Building. The proposed office will be open from 9:30 a.m. to 6:00 p.m. The applicant testified that the office will be but one of three childrens' dental offices serving the Southeast area population of 234,625 persons. The applicant will not reside on the premises. His plans are uncertain whether he will rent out the second floor.

8. The applicant has tried to find suitable office space to relocate his office in a commercially zoned area of Anacostia. He has been unsuccessful because of a lack of suitable commercial space in the area. The applicant is vacating his present location because of unsuitable terms for releasing.

9. The applicant proposes to demolish the existing garage on the site and pave the rear yard for on site parking for his patients and his staff. He testified that ten automobiles would be accommodated on the site. The applicant anticipates that his patients will come on foot, public transportation and by car.

10. The applicant testified that it was his opinion that the property could be used for residential purposes. The Board agrees.

11. There was no evidence that the property had ever been advertised for sale or use as residential property.

12. The Office of Planning and Development, by report dated July 16, 1981, recommended that the application be denied. In its report the OPD stated that it did not find any exceptional or extraordinary conditions or situations relating to the subject property's physical characteristics which would place an undue hardship on the owner in operating said property in compliance with the requirements of the R-2 District. The property is topographically level, rectangular in shape, has access to public streets and alley, and is developed with a dwelling type typical to this neighborhood, which could be renovated for occupancy in this viable residential neighborhood. The Board so finds.

13. A property owner within two blocks of the subject site testified that he thought the site should be used residentially if feasible. If the property could not be used for a dwelling, the proposed use would be acceptable, since the subject property was so run down, the proposed use would be an improvement. The use would be acceptable only if the applicant provided on-site parking. The owner testified to a parking problem within the immediate area.

14. Advisory Neighborhood Commission - 8D made no recommendation on the application. The single member district 8D01, in a letter filed July 8, 1981, reported that it had met with the applicant. A concern was raised about parking, but the objectant was satisfied when the applicant proposed on-site parking. It was the conclusion of all present at the ANC SMD meeting that the application be approved. The Board is required by statute, to give great weight to the issues and concerns of an ANC only when it is a recommendation of the ANC as a whole and it is in writing. This is not the case herein.

CONCLUSIONS OF LAW AND OPINION:

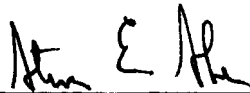
Based on the record, the Board concludes that the applicant is seeking a use variance, the granting of which requires proof of a hardship that is inherent in the property itself. The applicant has the burden of proof in establishing that the property cannot be used for the purposes for which it is zoned. The Board concludes that that burden has not been met. There is no evidence that the property cannot be used for a residential purpose. The testimony of the applicant and the Office of Planning and Development indicates that it can be so used. The Board notes the testimony as to the scarcity of dental services for children in the general area, but concludes that such testimony does not provide a basis to grant a variance.

The Board further concludes that office use is inconsistent with the predominant residential character of the area and concludes that the relief cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. Accordingly, it is ORDERED that the application is DENIED.

VOTE 5-0 (Lindsley Williams, Charles R. Norris, Douglas J. Patton, William F. McIntosh and Connie Fortune to DENY).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 13494
PAGE 4

ATTESTED BY: 
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 10 NOV 1981

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."